UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

In Re SONY VAIO COMPUTER NOTEBOOK TRACKPAD LITIGATION	Civil No. 09CV2109 BEN(RBB) ORDER DENYING PLAINTIFFS' EX PARTE APPLICATION TO EXCUSE CLASS REPRESENTATIVES' PERSONAL APPEARANCE AT ENE [ECF NO. 39]

Introduction

On January 11, 2011, Plaintiffs filed an Ex Parte Application to Excuse Class Representatives' Personal Appearance at ENE [ECF No. 39]. In their Application, Plaintiffs Christina Egner and Ronald Flynn request that they be permitted to participate in the January 21, 2011 Early Neutral Evaluation Conference by phone. (Pls.' Ex Parte Application Excuse 4, ECF No. 39.) Attached to the Applications are Declarations of Christina Egner and Ronald Flynn. (Id. Decl. Egner; id. Decl. Flynn.) Plaintiff Egner states that "[b]ecause of a particularized medical condition, travel is contraindicated for me at this time and presents a medical risk to me and to my pregnancy." (Pls.' Ex Parte

Application Excuse, Decl. Egner 2.) Plaintiff Flynn maintains that he is the sole proprietor of his real estate business, and "[d]uring this time I generally work six to seven days a week . . . ." (Pls.' Ex Parte Application Excuse, Decl. Flynn 2.) Flynn also states that this period is "critical" to his business, because these real estate transactions are "consummated in the second and third quarter." (Id.) In their Application, they contend that "[t]wo days of cross-country travel presents a medical risk to Ms. Egner and will have a detrimental impact on Mr. Flynn's individual business." (Pls.' Ex Parte Application Excuse 4, ECF No. 39.)

Defendant, Sony Electronics, Inc. filed an Opposition to Plaintiffs' Ex Parte Application on January 13, 2011 [ECF No. 40]. In its Opposition, it points out that between November 24, 2010, and December 6, 2010, Plaintiffs' counsel and Sony's counsel discussed Plaintiffs' proposal that the individuals be excused from attending the Early Neutral Evaluation Conference. (Def. Sony Electronics Inc.'s Opp'n 2, ECF No. 40.) During these discussions, the reason given for the request was "travel distance." (Id.) According to Sony, "[P]laintiffs did not mention plaintiff Flynn's work schedule or plaintiff Egner's pregnancy as a basis for their request." (Id.)

Defendant, Best Buy Co., Inc. filed its Response to Plaintiffs' Ex Parte Application to Excuse Class Representatives' Personal Appearance [ECF No. 41]. Best Buy does not expressly oppose Plaintiffs' request to be excused from personally attending the ENE. (Def. Best Buy Co., Inc.'s Response 1-2, ECF No. 41.) Instead, it states, "If plaintiffs are excused from attending, so too should Best Buy's representative be permitted to participate by phone, and Best Buy pledges to have her available to do so." (Id. at 2.)

On January 14, 2011, Plaintiffs filed their Reply [ECF No. 44].

Discussion

On September 25, 2009, Plaintiff Ronald Flynn, a resident of Florida, filed his Class Action Complaint in the United States District Court for the Southern District of California. (Compl. 1, 3, ECF No. 1.) On March 22, 2010, Plaintiff Christina Egner, a resident of New Jersy, joined this action as a Plaintiff when the First Amended Complaint was filed, and she was named an additional Plaintiff. (First Am. Compl. 1, 4, ECF No. 13.) These Plaintiffs initiated and intend to prosecute this lawsuit in the southern district of California. Accordingly, they voluntarily chose to subject themselves to the local rules of this Court and assume the burdens of litigating these claims in a forum far from their home.

Local Rule 16.1(c) provides that "[within forty-five (45) days of the filing of an answer, counsel and the parties must appear before the assigned judicial officer supervising discovery for an early neutral evaluation conference . . . ." S.D. Cal. Civ. L.R. 16.1(c). The Court, on November 22, 2010, issued its Notice and Order for Early Neutral Evaluation Conference [ECF No. 32]. The Notice clearly states that "all parties" must be present at the early neutral evaluation conference. (Not. Order Early Neutral Evaluation Conference 1-2, ECF No. 32.)

On December 14, 2010, Plaintiffs, and Defendants, Sony

Electronics and Best Buy, filed a Joint Ex Parte Motion to Continue Early Neutral Evaluation Conference from January 12, 2011, to January 21, 2011 [ECF No. 36]. In the Joint Ex Parte Motion, counsel for all parties agreed that continuing the early neutral evaluation conference to January 21, 2011, was “mutually convenient for all parties.” (Joint Ex Parte Mot. Continue 1, ECF No. 36.) After the Court granted the joint request and reset the early neutral evaluation conference to January 21, 2011, Plaintiffs Flynn and Egner have asked that their personal appearance be excused.

After considering all relevant facts, and the materials submitted by counsel, the Court finds that Plaintiff Flynn has not shown good cause to excuse him from personally attending the January 21, 2011 early neutral evaluation conference. His request is **DENIED**. Similarly, the Court finds that Plaintiff Egner has not provided the Court with sufficient information to show good cause to excuse her appearance at the January 21, 2011 conference. Her request is **DENIED WITHOUT PREJUDICE** to submitting a motion for reconsideration, accompanied by a declaration from her treating physician, that describes the medical reason that precludes Plaintiff Egner from traveling to participate in this litigation and when this information was first communicated to her.

IT IS SO ORDERED.

January 14, 2011

RUBEN B. BROOKS
United States Magistrate Judge

cc: All Parties of Record

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